

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA* December 11, 2024

VS. * CRIMINAL ACTION NO.

BAILEY WARREN LOWE * 6:23-CR-154

BEFORE THE HONORABLE ALAN D ALBRIGHT
SENTENCING HEARING

APPEARANCES:

For the Government: Greg Gloff, Esq.
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Proceedings recorded by mechanical stenography,
transcript produced by computer-aided transcription.

10:18 1 (Hearing begins.)

10:18 2 DEPUTY CLERK: Court calls Case

10:18 3 6:23-CR-154, United States of America vs. Bailey Warren

10:18 4 Lowe. Case called for a sentencing hearing.

10:18 5 MR. GLOFF: Greg Gloff for the United

10:18 6 States.

10:18 7 MR. DEBYE: Stephen Debye for the

10:18 8 defense. Good morning, Your Honor.

10:18 9 (Defendant was sworn.)

10:18 10 THE COURT: Mr. Debye, good morning.

10:19 11 MR. DEBYE: Good morning, Judge.

10:19 12 THE COURT: Mr. Lowe, good morning. Did

10:19 13 you hear what I -- were you in here when I talked

10:19 14 earlier about your right to appeal?

10:19 15 THE DEFENDANT: Yes, Your Honor.

10:19 16 THE COURT: Okay. Did you understand

10:19 17 that?

10:19 18 THE DEFENDANT: Yes, Your Honor.

10:19 19 THE COURT: Okay. Have you read and

10:19 20 either had -- have you either read or had read to you a

10:19 21 copy of the presentence investigation report?

10:19 22 THE DEFENDANT: Yes, Your Honor.

10:19 23 THE COURT: Objections?

10:19 24 MR. DEBYE: There are objections, Your

10:19 25 Honor.

10:19 1 THE COURT: Okay.

10:19 2 MR. DEBYE: They are set out in my
10:19 3 sentencing memorandum. They were initially filed and
10:19 4 obviously the government responded or the probation
10:19 5 department responded and I just attached those
10:19 6 responses to my memorandum and incorporated them.

10:19 7 But I can -- I can tell you that some of
10:19 8 the objections aren't really that pertinent today.
10:19 9 There are two that I'm going to focus on. The
10:19 10 objections I'm not going to focus on today is the
10:19 11 objection to the mandatory restitution, I think.
10:19 12 \$5,000. The argument that I made was that the
10:20 13 defendant is indigent and that would make it unable to
10:20 14 pay that. The probation's response -- probation
10:20 15 department's response to that was at some point should
10:20 16 he be released he will be able bodied and able to get a
10:20 17 job and that the statute accounts for that ability to
10:20 18 make future income and that he would be able to pay the
10:20 19 restitution. I'm not going to make any argument beyond
10:20 20 that.

10:20 21 THE COURT: So obviously I rarely see
10:20 22 that end of it. I don't usually give very substantial
10:20 23 fines and -- but I don't really know that I've ever had
10:20 24 to even follow up with restitution. My -- I guess my
10:20 25 question would be I assume whoever's collecting the

10:20 1 fine takes into account the indigency or the wealth of
10:20 2 the person who I give the fine to, and I would not
10:20 3 ever -- if Mr. Lowe or anyone were unable to pay the
10:21 4 fine because financially he's unable to pay the fine, I
10:21 5 would not consider that a violation of supervised
10:21 6 release or anything that he would be punished for. So
10:21 7 I think, number one, I think I have to impose the fine
10:21 8 regardless. But I'm just letting Mr. Lowe know that I
10:21 9 would not see a failure to pay the fine if he were
10:21 10 financially unable to do so as a violation of my order
10:21 11 is the way I see the world.

10:21 12 MR. DEBYE: Understood.

10:21 13 THE COURT: If that helps you with your
10:21 14 concern.

10:21 15 MR. DEBYE: Yes, sir.

10:21 16 The other objection I had was to the five
10:21 17 point enhancement for a pattern of sexual abuse. I
10:21 18 initially -- when I made my objection and the probation
10:21 19 department responded, it made clear that I
10:21 20 misunderstood how they were applying that. My
10:21 21 understanding was that they were using the -- that the
10:22 22 other -- when they seized my client's devices, they
10:22 23 found other similar situations to this case. They were
10:22 24 uncharged and are not relevant conduct. And I thought
10:22 25 that those instances were being used to establish the

10:22 1 pattern of sexual abuse. However, I got the response
10:22 2 from the probation department, and what they're saying
10:22 3 is, no. They are not counting that in that
10:22 4 calculation. What they are doing is using the relevant
10:22 5 conduct for this offense or that things happened on
10:22 6 more than one occasion, the exchanging of images and
10:22 7 the exchanging of images happened more than once. And
10:22 8 the comments do suggest that the offense itself and any
10:22 9 other -- at least one other prior incident could
10:22 10 establish that enhancement.

10:22 11 So I don't have any further -- so the
10:22 12 objection I made to that enhancement really didn't
10:23 13 properly apply because I'd misunderstood how they were
10:23 14 using it. So we abandon that objection.

10:23 15 So that brings us to the two objections
10:23 16 that are at issue, I believe. The first one being the
10:23 17 two point enhancement for distribution of child
10:23 18 pornography. My objection to that was that Mr. Lowe
10:23 19 did not exchange images, did not distribute images as
10:23 20 we know that term to mean, meaning he didn't share it
10:23 21 with anyone. He didn't use any peer-to-peer website.
10:23 22 There was no evidence that he intended to do that.
10:23 23 What the probation department used for that enhancement
10:23 24 is what basically the conduct for which he's being
10:23 25 charged with which was having the minor take illicit

10:23 1 pictures of herself and send them to him via Snapchat.

10:24 2 THE COURT: Which your argument is that
10:24 3 is that is under 18 United States Code Section 2422(b)
10:24 4 what he is being punished for and they're doubling down
10:24 5 by -- those are my words, but essentially it's double
10:24 6 counting to charge him with that offense and then say
10:24 7 we get to enhance under the guidelines.

10:24 8 I've gone through this before.

10:24 9 MR. DEBYE: Sure. And no. Well, my
10:24 10 understanding of double counting is if the conduct used
10:24 11 to justify the enhancement is a necessary component
10:24 12 like something that the -- is basically a prong of the
10:24 13 crime. That's not the case here. I mean, Mr. -- there
10:24 14 are other ways that Mr. Lowe could have violated the
10:24 15 statute didn't necessarily require him to do it this
10:24 16 particular way, though I would like the Court to take
10:25 17 that line of thinking and consideration. What the
10:25 18 defense is saying on this objection is, well, for
10:25 19 example, probation came back with a case from the Fifth
10:25 20 Circuit, the McGavitt case which is also attached to my
10:25 21 memorandum, where they state that that -- that the
10:25 22 Court held that the defendant coercing or asking for or
10:25 23 having the child victim create an image and send that
10:25 24 image to him constitutes distribution. As it says in
10:25 25 my memorandum, that isn't what the Court found. The

10:25 1 Court -- in that case the defendant had not properly
10:25 2 preserved that objection, had not made that objection
10:25 3 at trial. The trial court agreed that that conduct was
10:25 4 distribution. What the McGavitt court said, what the
10:25 5 Fifth Circuit said was it recognized that the Fifth
10:25 6 Circuit has not actually addressed that subject yet.
10:26 7 So it acknowledged that it's an issue that it has not
10:26 8 ruled that way. It was not ruling that way in that
10:26 9 particular case though in dicta it does suggest that
10:26 10 maybe perhaps they -- you know, they give credence to
10:26 11 the district court's logic and somewhat agree with it,
10:26 12 but they do not find that that conduct --

10:26 13 THE COURT: Satisfies the distribution.

10:26 14 MR. DEBYE: -- satisfies distribution,
10:26 15 Judge.

10:26 16 And so -- and of course we're making the
10:26 17 objection now and I'd like for you to remember these
10:26 18 objections when we're talking about 3553 considerations
10:26 19 just to take into account.

10:26 20 THE COURT: Let me hear a response from
10:26 21 the government on that.

10:26 22 MR. GLOFF: Couple of things just
10:26 23 basically on distribution. Distribution can be charged
10:26 24 as a separate offense. And, in fact, there have been
10:26 25 cases that have come through this Court and cases that

10:26 1 are working their way through this Court where exactly
10:27 2 these facts happened and it was charged as a
10:27 3 distribution or aiding and abetting the distribution.
10:27 4 When you ask a minor to produce sexually explicit
10:27 5 images and send them to you, you're aiding and abetting
10:27 6 the distribution of child pornography. So that's not
10:27 7 really the question. The question is -- the Court
10:27 8 raised, is it double counting? In this particular
10:27 9 statute, this is what's known as the enticement statute
10:27 10 and it's basically, did they use a facility of
10:27 11 interstate or foreign commerce like a cell phone or
10:27 12 computer to entice or induce a minor to engage in some
10:27 13 sexual activity which any person can be prosecuted?
10:27 14 That doesn't always happen with distribution.
10:27 15 Sometimes it's just a phone call or working over a
10:27 16 computer and there's no images exchanged at all. In
10:27 17 fact, some of those cases have come in here where it's
10:27 18 just like, hey. I want to meet you and get to know you
10:27 19 and then they end up having sex with the minor.

10:27 20 THE COURT: So here if I -- I'm just
10:27 21 making sure I understand. It's not that Mr. Lowe could
10:28 22 be charged with the exact same -- with what he's been
10:28 23 charged with without the distribution having taken
10:28 24 place.

10:28 25 MR. GLOFF: Yes, sir.

10:28 1 THE COURT: And so in this case the fact
10:28 2 that he enticed and obtained the distribution of the --
10:28 3 of the -- of images gets -- is the basis for the two
10:28 4 point enhancement. And again, I'm -- I'd like to say
10:28 5 as much of this as I can so the record when they're
10:28 6 grading my papers, they know what I was thinking is
10:28 7 because with my -- my understanding is of course also
10:28 8 with regard to the guideline range, the effort is to
10:28 9 make sure I sentence Mr. Lowe within a range that the
10:28 10 numbers lead us to. And so the two point enhancement
10:29 11 is to reflect above and beyond what someone would
10:29 12 ordinarily get. The bailiwick for sentencing should go
10:29 13 up two points because in addition to the other conduct
10:29 14 for this offense, there was distribution and that's
10:29 15 what bumps up the guideline range that I should
10:29 16 consider.

10:29 17 MR. GLOFF: And --

10:29 18 THE COURT: Is that fair?

10:29 19 MR. GLOFF: That's exactly correct.

10:29 20 There have been other cases with this statute where the
10:29 21 defendant enticed the minor over the telephone, cell
10:29 22 phone or application or whatever. No images were
10:29 23 exchanged. Maybe they met and had sex. Maybe it was
10:29 24 an undercover operation. But this defendant went an
10:29 25 additional step and said not only am I enticing you,

10:29 1 but I also want you to send me images.

10:29 2 THE COURT: And this is -- to some
10:29 3 extent -- and Mr. Debye, I'm going to give you a chance
10:29 4 to respond to this.

10:29 5 So there's some part of this also that
10:30 6 is -- not use "great" -- is a cleaner way of as opposed
10:30 7 to me thinking that the guideline says it should be X
10:30 8 to Y and then I think, oh, but there was distribution
10:30 9 here and I would turn maybe to 3553 and do a variance
10:30 10 up to reflect the additional conduct. This is actually
10:30 11 putting as much as we can mechanically put down this --
10:30 12 by -- if I were to accept the two points or not, then I
10:30 13 would be making clear for the record that I was
10:30 14 sentencing within the guideline range where I took that
10:30 15 additional conduct into consideration and it's half a
10:30 16 dozen one -- it's the same -- it's really the same
10:30 17 thing.

10:30 18 MR. GLOFF: Exactly. So what the
10:30 19 guidelines -- we have to also remember that overall the
10:31 20 overarching theme of the guidelines is they're advisory
10:31 21 to the Court. The Court does not have to follow the
10:31 22 guideline range. And as the Court's well aware --

10:31 23 THE COURT: I would quit if I had to.

10:31 24 MR. GLOFF: What's that?

10:31 25 THE COURT: I would quit if I had to. I

10:31 1 mean, I -- seriously. In either direction. If I
10:31 2 couldn't go down or I couldn't go up, I wouldn't do
10:31 3 this.

10:31 4 MR. GLOFF: Of course it takes away the
10:31 5 Court's discretion if it were mandatory like it used to
6 be.

7 THE COURT: I agree.

10:31 8 MR. GLOFF: But it establishes some
10:31 9 metrics. Without trying to muddy the water, you could
10:31 10 say, no. I'm not going to award the two points. I'm
10:31 11 going to grant the objection and still take the conduct
10:31 12 into account in assessing sentence.

10:31 13 THE COURT: Right.

10:31 14 MR. GLOFF: So that's -- that's totally
10:31 15 within the Court's right and discretion to do that.

10:31 16 The only -- the last thing I would say
10:31 17 about the distribution is probation's right and also
10:31 18 Mr. Debye's right in that the case -- the McGavitt case
10:32 19 was decided at the end of the day because they didn't
10:32 20 preserve the right. So it was a different standard.
10:32 21 It was -- because they didn't object to those two
10:32 22 points like the defense is doing today. But the
10:32 23 Court -- and this is United States versus McGavitt.
10:32 24 It's in the -- it's cited in the probation's response
10:32 25 to the objections and also in Mr. Debye's memo. But

10:32 1 just for the record 28 F.4th 571 Fifth Circuit 2022 on
10:32 2 or about 576. The Court does say this language which I
10:32 3 think is instructive: As a whole, Section 2G2.1's text
10:32 4 and relative commentary support the district court's
10:32 5 application of the enhancement.

10:32 6 So those facts were pretty much on all
10:32 7 fours with our facts. Defendant was talking with the
10:32 8 minor, got that minor to perform certain acts, certain
10:33 9 sexual acts, memorialized that, had videos, what have
10:33 10 you, and sent to him. And the district court in that
10:33 11 case awarded the two points for distribution.

10:33 12 So those are kind of the facts, but the
10:33 13 case was decided as Mr. -- since they didn't preserve
10:33 14 their right or their objection, it was a little easier
10:33 15 standard for the Fifth Circuit. But I think the
10:33 16 distribution is appropriate in this case. And
10:33 17 that's -- without beating a dead horse more, I'm going
10:33 18 to sit down.

10:33 19 THE COURT: Yes, sir.

10:33 20 MR. DEBYE: I will just say that I don't
10:33 21 think Mr. Gloff's analogy of the aiding and abetting
10:33 22 the production of child pornography is apples to apples
10:33 23 necessarily. There's a whole different set of
10:33 24 guideline enhancements that would or would not apply.
10:33 25 Ironically -- or maybe not ironically -- this

10:33 1 particular distribution enhancement would not apply.
10:33 2 That would be double counting in that kind of case.
10:33 3 The guidelines address -- and I don't know them
10:34 4 backwards and forwards, but in those child pornography
10:34 5 cases is did you disseminate them for pecuniary
10:34 6 without -- you know, there's four or five.

10:34 7 THE COURT: Look. I get -- I feel like
10:34 8 I'm in a patent case doing a Markman hearing a little
10:34 9 bit, but I get that there's one argument you can make
10:34 10 where you legitimately say -- look at me and say he
10:34 11 didn't distribute it. I mean, he didn't distribute it.
10:34 12 And depending on how we look at the word "distribute,"
10:34 13 Mr. Gloff's also right that, well, he got the images.
10:34 14 So they were distributed.

10:34 15 MR. DEBYE: Right. Yes, Your Honor. And
10:34 16 I'll keep the rest of it very brief.

10:34 17 He pointed out what the McGavitt court
10:34 18 said regarding those facts. I will also say the Court
10:34 19 also said it can see the -- it can see the conflict, if
10:34 20 you will, between the two comments that are at play.
10:35 21 And so I just want to point that out.

10:35 22 And finally I want to point out that, you
10:35 23 know, and Mr. Gloff mentioned that the guideline ranges
10:35 24 are advisory and, yes, of course we agree with that.
10:35 25 But they're also meant to avoid disparate sentences and

10:35 1 so we're looking for conduct that sort of
10:35 2 differentiates this case from other cases, and again
10:35 3 that goes back more to the -- almost the double
10:35 4 counting argument is this -- it's hard to imagine this
10:35 5 kind of case happening in many other different ways
10:35 6 other than using -- and that actually bleeds into the
10:35 7 objection for the computer which I would like to get --

10:35 8 THE COURT: Go ahead.

10:35 9 MR. DEBYE: Okay. And, Judge, on that
10:35 10 one I will -- I will argue that I do not have any
10:35 11 binding authority or any good authority that tells you
10:35 12 that the computer enhancement should not apply to this
10:35 13 case. All I can say is it's more of a spirit of the
10:35 14 law argument in the sense that this -- I feel that this
10:35 15 enhancement is such an anachronism we probably won't be
10:36 16 seeing it in five, six, seven, eight, nine, ten years,
10:36 17 I would hope.

10:36 18 THE COURT: In five years we'll have AI
10:36 19 which I think the Supreme Court has said you can't
10:36 20 punish people for. So maybe all this will go away.

10:36 21 MR. DEBYE: We'll see, Judge.

10:36 22 And I just -- and if you'll oblige me, 18
10:36 23 USC 2422(b) which is what Mr. Lowe was indicted for and
10:36 24 which he pled guilty says whoever, using the mail or
10:36 25 any facility or means of interstate or foreign commerce

10:36 1 or within the territorial jurisdiction of the United
10:36 2 States knowingly persuades, induces, entices or coerces
10:36 3 any individual who has not obtained the age of 18 years
10:36 4 to engage in prostitution or any sexual activity for
10:36 5 which a person can be charged with a criminal offense.

10:36 6 The reason I read that is to say we --
10:36 7 the last defendant seems his conduct occurred on Fort
10:36 8 Hood. So that was the jurisdictional hook. Here he
10:37 9 would have to use the mail to do this crime which -- I
10:37 10 guess what I'm getting at is I'm sure it's probably odd
10:37 11 and you probably can't recall a case where somebody
10:37 12 committed this particular crime using the mail. So he
10:37 13 would have to use some other facility of interstate
10:37 14 commerce which I had a hard time racking my brain to
10:37 15 think how else would he do it other than using his cell
10:37 16 phone, a computer, an interactive device, you know, the
10:37 17 social media. And so that just goes to my argument
10:37 18 that it's -- it's anachronistic. It's difficult to
10:37 19 imagine many other ways he could have committed this
10:37 20 particular crime without using a computer in today's
10:37 21 day and age. I don't think it -- I don't think it
10:37 22 tells us conduct -- it doesn't -- it doesn't
10:37 23 differentiate conduct between him and other similarly
10:37 24 situated defendants is my argument there, Judge.

10:37 25 THE COURT: I'm going to overrule that

10:37 1 objection. I've dealt with it before and, frankly, I
10:38 2 think as a policy matter, which I'm not involved in, I
10:38 3 think that is one of the issues I think the Sentencing
10:38 4 Guideline Commission ought to take up and tell us
10:38 5 whether or not they really mean for it to affect the
10:38 6 way it does in the same way that I think we've -- I've
10:38 7 talked to Mr. Gloff and others about the fact that, you
10:38 8 know, there was a time when during Breaking Bad when,
10:38 9 you know, meth was at 85 percent and you got an
10:38 10 enhancement of points for it being above a certain
10:38 11 purity and now 100 percent of the cases I have are of
10:38 12 that purity and so they're all getting the two points.
10:38 13 I don't know that the Commission means for them to get
10:38 14 two points when -- under the percent of it, but that's
10:38 15 where the guidelines are still at.

10:38 16 And also we sit in the Fifth Circuit and
10:38 17 I have a pretty good idea of how the Fifth Circuit
10:38 18 would view this and so I'm going to overrule -- I'm
10:39 19 overruling all of your objections. But obviously I
10:39 20 think they were well taken.

10:39 21 So is there anything else you wanted to
10:39 22 take up before I move on to advising him of his
10:39 23 guideline range?

10:39 24 MR. DEBYE: No.

10:39 25 THE COURT: Okay. Anything from the

10:39 1 government before I move on?

10:39 2 MR. GLOFF: Not at this point.

10:39 3 THE COURT: Oh, also I need to read -- I
10:39 4 got the look from Jen which is what reminded me that I
10:39 5 had to read this.

10:39 6 The Court adopts the recommendations of
7 the United States Probation Office and adopts by
8 reference and imposes the mandatory and standard
9 conditions of probation and supervised release in the
10:39 10 district-wide standing order of November of 2016.

10:39 11 Mr. Lowe, you are a total offense level
10:39 12 of 33, a criminal history category of one. Your
10:39 13 guideline range -- let me start with your statutory
10:39 14 range which is ten years to life. Your guideline range
10:39 15 is 360 months to life. Term of supervised release of
10:40 16 five years to life. You are ineligible for probation.
10:40 17 A fine of up to \$250,000. No restitution. A one time
10:40 18 special assessment of \$100. And a mandatory assessment
10:40 19 or fine of \$5,000 which we've discussed already.

10:40 20 Mr. Lowe, this is your opportunity to
10:40 21 speak to the Court. I encourage you to do so if you
10:40 22 want to. Obviously it's not required, but I encourage
10:40 23 you to do it. It helps me a great deal to hear from
10:40 24 people who I'm about to sentence. Then I'll hear from
10:40 25 your counsel, and finally I'll hear from the

10:40 1 government.

10:40 2 Mr. Lowe?

10:40 3 THE DEFENDANT: I don't know when or
10:40 4 where it all started to go wrong, but I became someone
10:41 5 even now looking back that I don't recognize.

10:41 6 I failed myself and my family and the
10:41 7 people in this country that I swore to defend. And I
10:41 8 did things I do regret. And this is not -- it is my
10:41 9 hope. But the ones I've hurt will live happy lives and
10:41 10 that God will heal their hearts.

10:41 11 God put my life in your hands and I
10:41 12 understand that I must own up to my past, but I hope
10:41 13 that whatever happens from here that it is God's will.
10:41 14 That's all.

10:42 15 THE COURT: Mr. Debye, is his mother
10:42 16 here?

10:42 17 MR. DEBYE: Yes. That's the first thing
10:42 18 I wanted to point out, Judge. His mother, his
10:42 19 stepfather, his brother, his grandmother and his aunt
10:42 20 are all here in the courtroom this morning. And his
10:42 21 father. I'm sorry. And his biological father.

10:42 22 THE COURT: If you would have his mother
10:42 23 and grandmother come up.

10:42 24 MR. DEBYE: Sure.

10:43 25 THE COURT: If you'd like to give him a

10:43 1 hug.

10:43 2 Grandma gets one too.

10:44 3 You don't need to say anything unless you
10:44 4 just want to.

10:44 5 UNIDENTIFIED SPEAKER: I just want to
10:44 6 address the Court and let them know I am sorry for
10:44 7 anyone that got hurt or if anyone was hurt, but please
10:44 8 have compassion because I haven't had my son home in
10:44 9 five years. He's been overseas in Japan. And now he's
10:44 10 going to be taken away from me again. So please take
10:44 11 that in consideration. Thank you.

10:44 12 THE COURT: Mr. Debye?

10:44 13 MR. DEBYE: Thank you, Your Honor.

10:45 14 As the Court is aware, we employed an
10:45 15 expert in this case Dr. Ferrara, and his evaluation is
10:45 16 attached to the sentencing memorandum. And because of
10:45 17 the nature of some of the -- of the topics in that, I'm
10:45 18 not going to repeat them except to say that they're in
10:45 19 the report. And some of the things I want to highlight
10:45 20 in there are first and foremost what the result of the
10:45 21 evaluation was which is that Mr. Lowe is a low risk to
10:45 22 reoffend, and that's based off mainly his age. And he
10:45 23 actually received points against his -- you know, made
10:45 24 his risk level a little bit higher because of his young
10:45 25 age because it's projecting out in the next five years.

10:45 1 He's going to get a sentence longer than that, I
10:45 2 would -- he's going to get a sentence of at least ten
10:45 3 years. But the point I'm making is when he is released
10:46 4 from whatever sentence you give him, he will be even a
10:46 5 lesser risk because science has told us that with these
10:46 6 crimes, two factors tell us if somebody is a risk to
10:46 7 reoffend. That is their age and the older they get,
10:46 8 the less risk they are, and a stable marriage life.
10:46 9 And so our hope today is that he gets a sentence that
10:46 10 will allow him to be released from jail still young
10:46 11 enough to start that family and to have a stable
10:46 12 married life.

10:46 13 I want to point the Court also to the
10:46 14 adverse child experience test and just quote from the
10:46 15 report where Dr. Ferrara said he had an overwhelming
10:46 16 number of adverse childhood experiences. There's --
10:46 17 and then he connects that -- he connects that to that
10:46 18 trauma, that childhood trauma to the sexual dysfunction
10:46 19 that manifested itself in this offense. The good news
10:47 20 is Dr. Ferrara identifies that with therapy and
10:47 21 treatment, he can be treated. And I think -- I think
10:47 22 they identify mainly the early exposure to pornography
10:47 23 which I think the term he uses was an incubation period
10:47 24 for his mind with these sort of -- to have this sort of
10:47 25 perverse and distorted view of sexuality started there.

10:47 1 Obviously he has family support. We're
10:47 2 asking the Court for a sentence of 240 months. I came
10:47 3 up with that because, one, I think it's -- it's --
10:47 4 that's a significant sentence. That satisfies the need
10:47 5 for a sentence for the -- to reflect the seriousness of
10:47 6 this offense. It's also double the mandatory minimum.
10:48 7 And while it is below, it's somewhere -- it's kind of
10:48 8 halfway between what the low end of the guideline and
10:48 9 the minimum calls for.

10:48 10 I also looked up the statistic that
10:48 11 across the United States in these federal courts for
10:48 12 sexual abuse cases about 46 percent result in a
10:48 13 downward departure, and those are -- those do not
10:48 14 include ones where the government files a motion. And
10:48 15 that goes to avoiding a disparate sentence. A
10:48 16 240-month sentence would not be a disparate sentence
10:48 17 that the guidelines and Congress don't want. It would
10:48 18 fall -- because the average reduction in those cases
10:48 19 was 34 percent. Now, I found that out after I came up
10:48 20 with the 240 months, but it just so happens that
10:48 21 34 percent reduction would result in a 240-month
10:48 22 sentence for Mr. Lowe.

10:48 23 With a -- with a 20-year sentence,
10:49 24 Mr. Lowe would -- assuming he could get good time could
10:49 25 get out in his 40s and live with -- assuming he gets

10:49 1 the treatment he needs and commits himself to living a
10:49 2 life worth living, could get married, have children and
10:49 3 lead a very productive life and enjoy his family. And
10:49 4 that's what he's asking for today, Judge. He's asking
10:49 5 for mercy.

10:49 6 THE COURT: Mr. Gloff?

10:49 7 MR. GLOFF: I'll try to keep my comments
10:49 8 brief.

10:49 9 I recognize the pain that there is in the
10:49 10 courtroom with the defendant's family. I understand
10:50 11 the loss and the separation and the pain and so my
10:50 12 heart goes out to them. My comments in no way are
10:50 13 meant to detract from what they're going through.

10:50 14 But we have to look at both sides of the
10:50 15 coin. And in this case when the FBI obtained the
10:50 16 defendant's cell phone and his applications and the
10:50 17 things that were on there, there were many, many, many,
10:50 18 many pieces of evidence. There are 11 victims in the
10:50 19 PSR, including the one that's charged. Those are the
10:50 20 ones that the FBI could positively identify. And those
10:50 21 are scattered throughout three states.

10:51 22 Whether or not the defendant has a low
10:51 23 risk to offend based on some pattern score, I have no
10:51 24 idea. I can't see into the future. But what I can see
10:51 25 is a pattern of behavior that this defendant has been

10:51 1 engaged in that we know of since at least 2019.

10:51 2 And the various victims are listed at
10:51 3 Paragraphs 41 through 52. And I just want to point out
10:51 4 the ages of those victims. And these are victims that
10:51 5 in some cases he obtained sexually explicit images from
10:51 6 them because he either coerced them or romanticized
10:51 7 with them or whatever, and some of these he actually
10:51 8 consummated by sexual abuse with some of those victims.

10:51 9 Victim KF, 14 years old; victim LR,
10:52 10 13 years old; victim CC, 14; VI -- excuse me -- VL,
10:52 11 12 years old; SB, 15; LM, 16; AC, 16; C Core, 13; RL,
10:52 12 16; MV, 15. And the victim in the count of indictment
10:52 13 13.

10:52 14 I would ask the Court to take notice of
10:52 15 the victim impact statements that are included in your
10:52 16 packet. I think there's three or four that were
10:52 17 submitted by several victims.

10:52 18 And once again, no one can see into the
10:52 19 future. But what I can say is that a mistake is when
10:52 20 you -- I'm not trying to be clever, but a mistake is, I
10:52 21 heard one time when you wake up in the morning it's
10:53 22 kind of dark and you put on dark socks and one of
10:53 23 them's black and one of them's blue and you get to work
10:53 24 in the light and you see that. That's a mistake.

10:53 25 Despite what the defendant had happen

10:53 1 when he was growing up and his childhood and all of his
10:53 2 experiences, he was a member of the United States
10:53 3 military. And quite frankly, you can't say, well,
10:53 4 Judge, you need to take that into consideration and
10:53 5 give him a break if you don't also at the same time
10:53 6 hold him to a higher standard. Much if not all this
10:53 7 activity was occurring while he was in the military
10:53 8 sometimes when he was deployed or on active duty.
10:53 9 Sometimes he would take leave and do these activities.

10:53 10 But you have to look at both sides of the
10:53 11 coin. And these were not mistakes. This was choice
10:53 12 after choice after choice after choice. And as much
10:53 13 pain as the family here's going through with being
10:54 14 separated from the defendant, those names that I --
10:54 15 those initials that I read of those victims, they're
10:54 16 going to have to deal with this -- the pain that they
10:54 17 suffered and the consequences of those things that
10:54 18 happened to them and that's going to -- that's going to
10:54 19 carry out throughout their life as well. But not
10:54 20 everybody that has a bad upbringing or has rough spots
10:54 21 makes these kind of decisions where you just say
10:54 22 whatever I want to do, I'm going to do and whoever I
10:54 23 want to do it to, I'm going to do it to.

10:54 24 I don't know what the appropriate
10:54 25 sentence is in this case, but I do know this. I

10:54 1 respectfully ask you when you take into consideration
10:54 2 what you believe is the appropriate sentence that you
10:54 3 look at his entire behavior and the choices that he
10:54 4 made.

10:54 5 That's all I have.

10:55 6 THE COURT: So as I said earlier in the
10:55 7 courtroom, ordinarily if I'm going to depart above the
10:55 8 guidelines, I reset for a hearing. I'm not going to do
10:55 9 that this time. If you want to make part of your
10:55 10 appeal that I didn't have a second sentencing, you can
10:55 11 do that.

10:55 12 Going through -- plus it would entail
10:55 13 bringing your -- all the family back and all that.

10:55 14 So but the bottom line is I'm -- having
10:55 15 studied the PSR, it's hard to imagine how the people
10:55 16 who created the guidelines could adequately capture
10:56 17 what the appropriate sentence is for what Mr. Lowe did,
10:56 18 and by that I mean they are far too low in my opinion
10:56 19 for his conduct. He's here. He's appeared contrite
10:56 20 here, but I'm just going to say this in front of his
10:56 21 family.

10:56 22 Mr. Lowe, you are a monster. Your
10:56 23 conduct is beyond words.

10:56 24 I -- the only -- under United States Code
10:57 25 18 Section 3553, to reflect the seriousness of the

10:57 1 offense, to promote respect for the law, to provide
10:57 2 just punishment for the offense, to afford adequate
10:57 3 deterrence to criminal conduct, to protect the public
10:57 4 from further crimes of the defendant, I'm going to
10:57 5 impose a sentence of life; a term of supervised release
10:57 6 of life; no probation; a fine of \$100; no restitution;
10:57 7 a one time special assessment of \$100; and a fine of
10:57 8 \$5,000.

10:57 9 I cannot -- I cannot put into words how
10:57 10 reprehensible I find your conduct to be. I'm
10:58 11 frankly -- I'm shocked by it. The fact that you were
10:58 12 in the military when you -- when you perpetrated these
10:58 13 horrific acts on this number of underage girls.

10:58 14 That's all I have to say.

10:58 15 Mr. Debye, I think you did an outstanding
10:58 16 job for your client. It's a great part of our system
10:58 17 that no matter what you're charged with you have
10:58 18 counsel that, you know, is of your quality and gave
10:58 19 that level of representation.

10:58 20 Mr. Gloff, I see some scurrying. Is --

10:58 21 MR. GLOFF: Well, I just -- I want -- I
10:58 22 understand the Court's sentence. I just want to make
10:58 23 sure that the Court apprises the defendant of his
10:58 24 special conditions.

10:59 25 THE COURT: Oh, I'm sorry.

10:59 1 Special conditions Paragraphs 78
10:59 2 through 100.
10:59 3 Is there anything else, counsel?
10:59 4 MR. DEBYE: No, Your Honor.
10:59 5 MR. GLOFF: Not from the government.
10:59 6 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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4

5 I, Kristie M. Davis, Official Court
6 Reporter for the United States District Court, Western
7 District of Texas, do certify that the foregoing is a
8 correct transcript from the record of proceedings in
9 the above-entitled matter.

10 I certify that the transcript fees and
11 format comply with those prescribed by the Court and
12 Judicial Conference of the United States.

13 Certified to by me this 19th day of
14 January 2025.

15
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